ITEM J3 AUTHORIZATION TO PUBLISH
RULES FOR TAX APPEALS

Reported by: Juli Price Jackson
No. CSR 5214
PRESENT

For the Board of Equalization:

John Chiang
Chairman

Claude Parrish
Vice-Chair

Bill Leonard
Member

Betty T. Yee
Acting Member

Marcy Jo Mandel
Appearing for Steve Westly, State Controller
(per Government Code Section 7.9)

Gary Evans
Acting Chief, Board Proceedings Division

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Staff:

Robert Lambert
Bradley Heller
Carole Ruwart
Ian Foster

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MR. EVANS: The next item is J3, a request for authorization to publish the five chapters of the Board of Equalization Rules for Tax Appeals.

MR. CHIANG: Okay, very good.

MR. EVANS: Mr. Lambert will make the presentation.

MR. LAMBERT: Mr. Chairman, I am joined at the table here by Mr. Bradley Heller, Mr. Ian Foster, and I believe Miss Carole Ruwart is also approaching.

MR. CHIANG: Thank you.

MR. LAMBERT: Staff requests permission to begin the A. P. A. rulemaking process for Board of Equalization's Rules for Tax Appeals.

Mr. Heller will summarize for the Board Members what's taken place with respect to this proposed rule since this the September 27th meeting.

MR. HELLER: Good morning.

Since the September 27th meeting, staff held an additional interested parties meeting to discuss communications with Board Members, the holding of -- actually, the hearing of confidential taxpayer information during closed session and also any other remaining issues that the interested parties wanted to raise.
Since then we've prepared responses to all of the interested parties comments, a cross-reference matrix showing the cross-references between the old Rules of Practice and the new Rules for Tax Appeals -- excuse me.

And then we have also prepared an index for the overall Rules for Tax Appeals and a flow chart showing all of the different administrative processes contained therein.

We've also updated Chapter 2 to clarify the references to Board staff in the different Board subdivisions that are cited throughout that chapter. And also to insure the appropriateness of all delegations of authority in there. And then also revised Chapter 5 to add alternatives for communications with Board Members, which included alternatives recommended by Mr. John Davies, Chief Counsel for the Franchise Tax Board and Lenny Goldberg, and he's with the California Tax Reform Association.

And then we also updated -- added alternatives for Section 5000.5033.22 dealing with the closed session. And there is an alternative staff prepared for Miss Yee, as well as an alternative that was recommended by Lenny Goldberg as well

MR. CHIANG: Thank you.

MR. EVANS: We have four speakers who have signed up.

MR. CHIANG: Thank you.
MR. EVANS: Lenny Goldberg, Joshua Golka, Bruce Langston and Marty Dakessian.

You have three minutes and please introduce yourself.

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LENNY GOLDBERG

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MR. GOLDBERG: Lenny Goldberg, California Tax Reform Association.

Thank you very much. I appreciate it that you held over from last time and had the interested parties meeting. I was in a remote part of the world when that happened, so I apologize for missing it, but I also want to say I appreciate the layout this time.

The objection that we had last time was that it was all presented as a fait accompli. There were no alternatives for the Board to examine. At this point the issues are out there as alternatives to the Board -- for the Board to examine. And I believe that this process should be one that is Board driven, not staff driven on critical decisions.

With regard to -- our goal, as an organization, is to increase the transparency, accountability and availability of information to the public of what our elected officials are doing in an adjudicatory capacity.

We think -- I actually think that in all of the long debates that have occurred, that making -- that if the Board were to become more open, accountable and
transparent in adjudication, it would go a long way
towards solving the criticisms of many, including the
State bar and many outside national observers to the
process in California and who have called for a tax
court.

I believe that there is a middle ground between
that call from many observers of California's system
to -- with the BOE continuing to act but in a way that's
more open, transparent and accountable and more like --
in a court-like manner as elected officials.

That said, in that -- in that respect and
this -- there are, I would say, fairly broad questions
that have gotten raised. The question I asked is if
there is not -- if one has to have ex parte
communication because there is not enough time at a
hearing to really get all of the information laid out on
the table, why is it that the Board doesn't change its
procedures such that its regulatory and rulemaking
functions at occur one day of the month and that several
days -- at least several days are set apart for much
more extensive hearings which can be had on the record
and which information is presented to the record and
there is no need, necessarily, to have those behind the
scenes, off the record briefings.

Now, the Franchise Tax Board proposal speaks a
little bit too on the record by saying,

"Let us make a record of the off the record
discussions or let us have all party meetings
so that all information is shared and is
publicly available."

That is one option. We've supported the
Franchise Tax Board option.

But I think there can be -- I would urge a
rethinking of the process such that this Board sits for
a number of days a month in different locations in the
State, perhaps -- and I know you do go to Culver City
and San Diego from time to time -- to hear -- to take
information on the record, have that record available to
the public to be scrutinized.

When you look through all of the cases you have
there are hundreds of millions, if not billions, of
dollars at stake every year. And those are taxpayer
dollars or tax -- or State dollars, whichever way you
look at it.

MR. EVANS: Time has expired.

MR. GOLDBERG: Time has expired.

If I may, I just want to say that with regard
to the proposal I made about closed sessions, I think
that Member Yee's proposal is probably better
articulated, gets to some of the same issues.

We were concerned about that language of
annoyance and embarrassment to the taxpayer that should
really not be an issue with regard to closed sessions.

And I would defer to Miss Yee's proposal in
that regard.

MS. YEE: Thank you.
JOSHUA P. GOLKA

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MR. GOLKA: Good morning, Mr. Chairman and Members of the Board. Joshua Golka with S. E. I. U. Local 1000.

We also appreciate the staff having the alternatives for the Board's consideration this morning. We believe that a lot of work went into the proposals that came forth and we're happy to see those before you today.

Regarding Section 501485.1, we would agree with Mr. Goldberg and also do support Mr. Davies' proposal.

In the alternative, if that is not an acceptable proposal for your alternative, we would like to see this section removed from the rulemaking -- the rules as proposed and dealt with more in depth as we move forward.

Regarding Section 5033.2, we also agree with Mr. Goldberg and we would defer to Miss Yee's suggestion and her proposed alternative and we would suggest that you adopt that.

Thank you.

MR. CHIANG: Thank you.

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BRUCE LANGSTON

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MR. LANGSTON: Good morning, I'm Bruce Langston from the Franchise Tax Board legal staff.

First, I'd like to compliment the Board staff for their hard work on this regulation, especially Bradley Heller, Ian Foster and Carole Ruwart who worked with us, spent countless hours going over our concerns.

And I think we have a good product. I would hate to see it get derailed because of some of the controversial issues.

FTB staff really has a neutral position on the communication with Board Members, however, I would point out -- I would agree that this is a new provision, it's not actually -- it's not currently in the regulations. So there is no requirement that you add it to the regulations. So that is also an option, that if there isn't an agreement, simply let the rest of the regulations go forward, which again are -- we worked very hard on and I think are very good -- and maybe reserve this for another time, if that's what you want to do.

Thank you.

MR. EVANS: Next speaker?

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MARTY DEKESSIAN

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MR. DAKESSIAN: Good morning, my name is Marty Dekassian.

I want to take a minute also to speak for someone who was going to be here yesterday, but because of the change in schedule, couldn't be here today -- attorney Joe Vinatieri, with the Whittier law firm of Bewley, Lassleben & Miller, wanted to express his support for the staff recommendations with respect to proposed regulations 5000.501.1 relating to communications with the Board Members and relating to the to 5033.2 relating to the discussion of trade secrets in closed session.

The individuals who have spoken in opposition to the staff recommendation I would submit, respectfully, don't have California small taxpayers in mind. And that's a shame. I personally feel -- I am a lawyer in the L. A. area, I have a lot of small business clients and I feel as though I've got an obligation to help small taxpayers who have matters before this Board. This is something I learned while working Vice Chair Parrish as his legal counsel for three years. He taught me that every taxpayer counts. I have seen him help the smallest of taxpayers from all walks of life and time and again, when they have had no one else to turn to and when all hope has been lost. Mr. Parrish has made this his legacy.
I salute this Board for being committed to the rights of small taxpayers to access their elected representatives.

I salute the Chairman, Mr. Chiang, for the efforts he has made to reach out to the small taxpayers through his workshops and clinics and through the efforts he has made to publish Board documents in different languages and otherwise reach out to ethnic taxpayers. Mr. Chiang has worked diligently to include, not disenfranchise his constituents, irrespective of there ethnicity or background.

I salute Board Member Leonard for his efforts in putting together the Board's pro bono program, clearly with indigent taxpayers in mind and for reaching out personally to taxpayers -- the smallest of taxpayers -- and devoting the resources of his office to this end.

And I also salute Board Member Yee for her efforts in dealing with one of my clients, a nonprofit corporation owned by two African American entrepreneurs who operated a service station in one of the worst neighborhoods in East Oakland and in the hopes of turning that neighborhood around.

So, as we sit here in our ivory tower today and listen to the attempt to carve away the most basic of rights set forth in our federal and State constitutions, we ought forget about the working people of this state who will be affected by these drastic changes and all
the good work that this current Board has done in their name.

I represent quite a few of these working people, many of whom are immigrant businesses. I represent Latino-owned businesses. I represent African American-owned owned businesses; Asian Pacific American-owned businesses and the list goes on.

I myself am the child of immigrants and I can tell you that in my experience immigrants are extremely distrustful of government based on the abuse of power and the corruption in the countries from which they emigrated.

Oftentimes the first extended involvement with -- these individuals have with government is the United States occurs with the Board of Equalization or the Franchise Tax Board. The ability to contact their elected officials with their problems may, oftentimes, be all they have.

Taking that right away will exclude these individuals from government participation.

MR. EVANS: Time has expired.

MR. DAKESSIAN: Can I have a minute?

MR. CHIANG: Marcy? Go ahead.

MR. DAKESSIAN: Thank you.

Is this what we have to say to our small businesses, to our ethnic taxpayers, to our English as a second language taxpayers -- "Stay away. Get out. Don't talk to us."?
Why? Because a bunch of people got together in a room in Sacramento and decided to strip away their rights?

We have over one million sales tax permit holders in California. And every Californian is affected by our tax agencies in one form or another.

Who speaks for them? Why are we stripping away their rights? I know that those opposed to a democratically elected tax board are thinking -- I know what they're thinking, "Let's carve out an exception for small businesses, let's let small businesses talk to their elected representatives, but not big taxpayers.

First of all, this is so discriminatory it's shameful. There are obvious constitutional issues with such approach.

But from a practical perspective, how does this work? What is a small taxpayer? Is it measured in terms of employees? Revenues? Profits? Do we require that they submit tax returns to Board staff prior to meeting with Board Members? Is it a lifestyle analysis? Maybe the guy with the Cadillac can't meet with the Board Member, but the guy with the '75 Pacer can?

It's just silly. We should move to continue -- we should continue to move in the direction of this Board's leadership, not away from it.

A vote for alternatives 2 or 3 is a vote against small taxpayers. It's just that simple.

And, in conclusion, I want to thank Board staff
for all of their hard work and your own staff got it right and you ought to listen to them.

    MR. CHIANG: Okay, any comments?
    MS. YEE: Mr. Chairman?
    MR. CHIANG: Yes.
    MS. YEE: A couple of comments.

    I too want to thank the staff for all of the work they put into working on these rules. It's been a challenging, arduous process, but I really appreciate the commitment that the team has had in working through the various options.

    But I had had an opportunity to actually look at all the chapters in toto over the course of the last several weeks. And I couldn’t help but think that a different approach may have been more appropriate -- a fine thing for me to say at this stage of the process.

    But, let me tell you why. It's -- my office had raised several issues during the course of the process regarding the openness of our proceedings. And I know that staff has been very eager to work on whatever options have been presented to you in terms of how to incorporate them into the proposal that we have before us today.

    One of them before you today is an alternative proposal that I am suggesting with respect to open meetings or the closure of meetings and let me just say that I don't believe that this alternative is ready to be considered today, the reason being that I don't
believe that there has been the thorough analysis that needs to take place with respect to this option. I think -- I have had some feedback with respect to the narrowness of the particular option. And, so, I am not going to be putting it forth today.

The -- it didn't benefit from discussion among the Board Members. I wouldn't agree that -- part of the process that I found rather faulty was that many of the options that were presented were incorporated by staff without a thorough discussion by the Board Members and, hopefully, with the guidance of some analysis that would have come before us so we could have that discussion publicly.

And it's something I know my office asked for, that I personally had asked for, and because of, I think, a perceived time element associated with the adoption of these rules, I don't believe we ever received.

Having said that, I think that one of the goals that I thought that we had been trying to set out for putting revised Rules for Tax Appeals in place and adopted by this Board was really to provide guidance for taxpayers that are going to have business coming before this Board. And in that regard, I do not find the rules to be all that helpful, primarily because it's driven by internal processes rather than really educating the taxpayer with respect to the various stages of the appeals process.
And I know that one of the issues that my office and I had raised had to do with at what point does the taxpayer really have an opportunity to know the status of their appeal that is going through the process?

And the rules seem to be more organized to at least inform staff internally about where the appeal may be, but certainly not for the taxpayer with respect to the status of his or her appeal.

And one of -- I agree with all of the comments, frankly, of the speakers. Let me just say I, as a member of this Board, am not going to be supporting any restriction on communication with Board Members.

It is something that I take very seriously and believe that it is something fundamentally important with respect to the ability for me to do my job well on this Board, this access to information.

And so I am not going to be open to really looking at hampering my ability to access information in order to make the best decision possible coming before the Board with respect to an appeals matter.

Finally, let me just say this, this is a very difficult thing for me to say, given that I know the staff has put a lot of time into this process, but to the extent that it doesn't provide further guidance and clarity for taxpayers that will be bringing matters before the Board, I will not be voting for the rules today.
MR. CHIANG: Is there a motion?

MS. MANDEL: I had actually a question for --

for staff.

I'm assuming if the rules go forward that
typographical errors and those kinds of things we can
take care of in the upcoming informal rulemaking
process?

I found some typos yesterday -- you probably
already found them and I am not going to tell you about
them today.

MR. HELLER: Staff will absolutely update the
rules for any typos that are discovered the actual
notice goes out.

MS. MANDEL: Okay. I did have a question on --
this is on Chapter 4, I guess that's you, Ian, 4052 C 3
which talks about -- it's when there's going to be a
formal and there is to be some kind of letter to the
taxpayer letting them know about the delay and C3, I
think, says that part of that letter will say -- remind
them that an unpaid tax bears -- that they still --
interest continues to accrue.

And I understand why somebody would want that
in there because taxpayers are, you know, not always up
to speed on the fact that they are going to owe even
more money as time goes on. And I -- the only concern I
have with that is I wouldn't want taxpayers to be misled
because we are talking about income tax cases. And if
they see that and go, "Oh, my gosh, why don't I pay
something toward this?"

In the income tax area there is a statute that automatically converts an appeal into a refund claim if there is payments. And there is issues about partial payments and Bruce maybe has an answer for this, but I would be concerned to make sure that any correspondence we send to the taxpayer from this -- from this Board that warns them about -- in an income tax case about if you don't pay there is going to keep being interest, that they not be misled so that when they -- if they turn around and pay their rights, ultimate rights, and appeal rights to court can be adversely impacted if they don't know.

So --

MR. LANGSTON: I do have one comment and that law was changed last year with California's conformity to the federal tax deposit rules.

MS. MANDEL: For partial payments?

MR. LANGSTON: Well, even -- even payments -- any payment before the thing -- before the deficiency amount becomes final.

So, a taxpayer can make even an excess payment and it will not automatically convert it to a refund claim until the final action on the appeal.

MS. MANDEL: That's cool. See, I've been sitting here so long they have changed things, okay.

MR. FOSTER: And if they do make full payment, the Board's action is converted to an appeal from a
denial of claim for refund and then --

MS. MANDEL: And then our correspondence tells them that at the end?

MR. FOSTER: Right.

MS. MANDEL: Okay, cool.

Okay. The only sort of other vaguely not so major, but there was one item in Chapter 5 and I know that we managed to take out during the process all of the things -- or most of the things that talked about how this Board would actually do things because the more we put in regulation of general processes or we used to have all of the Roberts Rules of Order or whatever -- just makes it more difficult for the Board.

And every time you don't do something exactly as it says in these rules, you are going to open the Board up for having its decisions vacated.

There was an item in Chapter 5 that I don't know -- I would kind of prefer to see it deleted. I don't know if somebody had a preference for it or not, but it was in -- on page -- it was in 5024 C, which talked -- which 5024 generally is the provision about formal opinions and concurring or dissenting opinions. And C talked -- is about the Board, once there's been a motion, the Board taking up and reconsidering at that meeting or the next meeting.

And it lays out, basically, the rule which is a Roberts Rules of how you do a motion for reconsideration. And it seems that, like the other
things that had been stripped out of how the Board actually makes a motion, that provision struck me as not really necessary or appropriate for regulation.

And I'm not sure if somebody wanted it to stay in or what, but --

MR. HELLER: Miss Mandel, I think staff's intent in adding that subdivision I think was especially to provide notice to the public that the Board could reopen the vote so that someone didn't leave a meeting thinking that a vote was final and then have it reopened subsequently, later that day.

MS. MANDEL: Okay.

MR. HELLER: But I think, based on the concerns that I am hearing, I think the staff could maybe limit it just to a previously recorded vote may be reopened at the same meeting or a subsequent meeting end there so that there is no description of the procedure provides the same notice, but doesn't do what we didn't want do the first place, which is limit the Board's discretion to handle their own voting and decisions.

Or we can delete it. It was just designed for notice of the Board's authority.

MS. MANDEL: I don't know how the other Members feel about it.

MS. YEE: I think just to be consistent it probably should just be deleted.

MS. MANDEL: These rules are so detailed and complicated now I kind of assume that we might end up
seeing our -- you know, we have a little pamphlet that
we send them that is in English and not regulatory form
and you might wind up revising that, right?

MR. LAMBERT: So, we'll meet back here next
year with a new version of the rules in plain English?
That's very pleasant to contemplate.

MR. CHIANG: Any other comments?
MR. PARRISH: Yes, Mr. Chairman.

MR. CHIANG: Yes, Mr. Parrish?

MR. PARRISH: First I want to look at each one
of you and thank you and tell each one of you and all of
the other people that were involved in this that your
efforts are very, very much appreciated.

It's sort of like whether or not these rules
are ever approved, or if they are approved or modified,
I can't thank you enough for your individual efforts.
And I hope none of you get discouraged because what you
have done and what you are going to do in the future
with regards to this effort is at least very, very much
appreciated by me.

I have been at the Cal Tax breakfasts and over
the years have heard various, you know, comments about
our operation and why don't we, you know, develop
these -- these are very, very important. I know how I
would feel sitting there, having gone through all of
this trouble and burning the midnight oil and then to
think, "Oh, gosh, all my effort was for nothing," but
that's not true at all.
Even if the rules are never approved, you have done a great service to the agency and the people of California. I am trying to give an example of something that's never used but serves a great purpose -- a life preserver on a ship, let's hope it's never used; a life boat, let's hope it's never used; a weapon, let's hope it's never used; a shield, an inoculation against disease, let's hope it's never used.

What you have done is in that vein. You've done a lot of work and I can't thank you enough for your efforts. And I know how you might feel here thinking, "You know, I put all this effort in," and it's sort of like launching a ship or something, will it ever get launched? But what you did is very, very important, even if it never is used because it has already served a great purpose.

Secondly -- and I want to be brief -- you know, we talk about transparency and openness and I myself -- I can't speak for the other Members -- but I know many of the staff attorneys that represent the State. I know them on a first name basis. I know the states that they came from. I know some about their families. I am fond of many of the representatives that appear here, I kid with them. I am their chum.

And so, a taxpayer -- I have known people in the audience here that have represented cases for years, seven years, at least -- and so a taxpayer sits in that spot over there and I have known these people and talked
to them and everything I get, everything my staff gets, comes from them. So, the little taxpayer -- maybe if you take the -- there is an individual sitting there and he has an openness, how about having a court reporter with me every time I talk to one of the BOE staff and divulge that to the taxpayer? I mean, what about the taxpayer's right to know and transparency?

How do you think a taxpayer feels when he comes before an elected Member -- and we know these attorneys for years and years, I mean, we know where they live, we know their family, we're their buddies, we're chums. We have to be impartial, I know all of the Members are, but imagine -- so all the taxpayer wants -- a brand-new taxpayer that I have never seen before -- he wants to give me a call. He should have a right to talk to me. Because, after all, I know the people sitting on this side of the bench here (indicating), I have known them for years. And so how do you think they feel about disclosure and transparency?

The only thing they have is the right to contact one of my deputies or myself. So, that's the answer to transparency and openness. The taxpayer that comes before us with his whole life savings at stake, he doesn't know me, I don't know him. I don't know where he comes from. I try to find out his facts. So, I can imagine how a taxpayer feels sitting in that seat, knowing that I know the staff for years and years and years and probably like them.
So, that's an answer to the other side of the coin. Well, with that having been said, this is a democracy and everybody, even with a different opinion, has a right to come forward and that's what everybody's been allowed to do is to say what they think. And then in America we take a vote and whether we win or lose, we just go forward. I have had a number of losing votes, as you all know, and I'm fond of all of you, I don't take it personally. Nobody sitting on the bench should take it personally. You don't win this vote, you win another vote. We go forward and we don't hold grudges.

So, I hope none of you hold a grudge because I don't and I know the Members here don't.

Thank you, Mr. Chairman, for the opportunity to speak.

MR. CHIANG: Very good. Any other comments?

MR. LEONARD: Yes, Mr. Chairman, I really would urge the Board to go forward today to publish this and if the Chairman's ready for a motion I'll make it make whenever.

I have great respect for Miss Yee and you raised an issue that I hadn't considered and I think it's critical and has to be addressed, but I am -- I'm taken by two aspects of this, one is the whole attempt here was to make our work more transparent to everybody -- taxpayers, practitioners, our staff, the other departments we work with. All these are are a written reflection of what we do. And in some ways
that's what's been so difficult to put into writing
because what we do is grown culturally, a combination of
statute, rules and tradition. And to put some of those
in writing -- I have -- my hat's off to you three for
the unbelievable work you've done.

I would rather put that out there, with all due
respect to the gentleman here, I think there's a lot
more individuals in California that will be aware of
this once published than all of our efforts so far to
publicize these rules that will, as we start to work
with them, will raise questions -- like you already
have.

The process to amend them is no more difficult
than this process to -- actually, it's a lot less
difficult than to bring this body -- at least
Mr. Goldberg won't have to carry that big package, it
will be a smaller thing that he comes up with.

I am going to vote for them and support them
strongly. At the same time I am already going to say, I
don't think they're perfect. I think you, Miss Yee,
have raised a great question.

I think Mr. Goldberg is way too conservative on
closed session. I don't think I'd ever vote for a
closed session. But, again back to our tradition,
culture, whatever it is we are trying to do -- and I
guess this is the disservice to taxpayers if we don't go
forward today, we're still doing all these things.
These are our rules of practice -- whether they are
adopted in writing or whether we just do them.

And I suppose the question you raised, Miss Mandel, I find interesting, there are some things, of course, we can't suspend because the constitution, the statute and the regulations require that. There are other parts of this rule that are kind of Roberts Rules adopted to us that I am -- I would ask for, I guess, legal counsel to look at that that by a majority vote of this Board we could suspend that rule -- whether it's to give taxpayer more time -- some of them are written in there, but others, by implication, I imagine, are subject to suspension.

So, the argument of vacating the ruling because we didn't follow the letter of our own rules of practice I don't think is an issue, but I'd like someone to study them.

Miss Mandel has raised an interesting point because a lot of these are just guidance, "Taxpayer, this is the way we'd like to do things." We can't anticipate every future contingency. We're trying to give guidance on how we would like to see that happen. And if it doesn't exactly fit, then we suspend the rule to make it fit that situation -- unless there is some prohibition on that that I'm not aware of.

Obviously, those that do prohibit it I have already spoken to.

So, I'd urge us to go forward today with the full knowledge that we'll be back within 30 or 60 days
with proposed amendments to different chapters and
sections as we actually try to work and deal with these.

Some of these traditions do need to be changed
because they're not as transparent as any of us would
like -- just the way we have always done it.

As Miss Yee points out, I'd like taxpayers to
have a much better information stream to know the status
of their case and the merits of the arguments of their
case.

I've continued as I talk to Mr. Goldberg to
resist the idea that a lot of our hearing summaries
remain confidential so long when we all have them and
we're talking publicly about them, but we can't share
them with anybody in the audience. I am not sure
sometimes even when the taxpayer has access to them, I'd
like to speed that up.

And I would urge the Board to go forward,
it's -- we're actually publishing what we do. And to
not publish what we do I think think runs the risk of
misleading taxpayers that maybe there aren't any rules
or the rules are somehow different than what's proposed
before us today, when the intention is that they're
merely a reflection of what we do today.

And to the extent that these good folks have
put into writing what we actually do and we don't like
what we see, and we wish to change that or clarify that
or amend that, you already made some great suggestions
this morning, I think that's healthy and part of the
process and will probably be ongoing for decades as new
twists and turns come up in hearings and
taxpayers' cases and we want to either put it into the
rules to say to others in the future, "If this comes up
again, we're going to do it this way," or to simply
suspend the rule and say, "This is one time only. We're
going to deal with you, but we're really not sending the
message to all taxpayers to have a like expectation in
the way that rule is applied."

So, Mr. Chairman, I am prepared to move it at
your discretion.

MR. CHIANG: Okay, any other comments?

MS. MANDEL: Well, just -- just two because I'm
going to ask you to maybe split out part of the package.

With respect to the communications with Board
Members we currently have a rule in communications with
Board Members. The good thing that was done in the
staff draft was an addition to our current existing rule
that has been in place for ten years to add with
specificity what our staff has always said was really in
there, was that even lawyers were included within that
rule, which for the more conservative lawyers in our
experience, is the benefit to add that language to what
is our current rules that's been there for ten years.

There is a second part to our current rule that
simply talks about the nature of proceedings before the
Board that's not picked up in these rules, but I think
what staff's done by -- by clarifying the longstanding
existing rule, at least for that purpose, is valuable.

I would -- if these rules went forward, for us to simply drop completely a provision that we've had for ten years doesn't really seem to me to be appropriate.

With respect to Chapter 3, which is property tax, we have not supported that previously. We -- the Board is using that process this year, but I think that the jury is still out on it and I am not going to be supportive of that chapter at this point.

So, I don't know how intertwined everything is, but -- but to go forward without a vote -- my vote on that chapter.

MR. PARRISH: Mr. Chairman, let me --

MR. CHIANG: Mr. Parrish?

MR. PARRISH: Yes, you know, this is important to have Rules of Practice. However, I would liken it to our 15,000 page regulations, you know, the books, and we couldn't possibly -- could not have possibly passed the whole thing. So, maybe what Marcy is talking about is taking it piecemeal, looking at it very carefully and doing it chapter by chapter in a very thoughtful way rather than trying to approve the whole, because my normal sentiment is to try approve what we have so far, but it appears there are the typographical errors --

MS. MANDEL: Well, typographical -- I am sorry to interrupt, but the typographical errors, what we're doing is it would go to formal rulemaking and typographical errors can certainly be fixed and other
things that that are nonsubstantive can be fixed in a public -- in the formal rulemaking to a fifteen-day file, anything that is really substantive would just -- would require another notice.

I was just -- I wanted -- if there was a motion for the entire package, I would ask that Chapter 3 be subject to a separate motion, but anyway -- sorry, just wanted to make that clear.

MR. PARRISH: Thank you.

MS. MANDEL: So, I didn't mean to totally cut you off.

MR. PARRISH: No, I basically said, I am supportive.

I understand there may be some fine tuning. Maybe it's going to be difficult to approve everything at once.

I think ultimately we should have rules of practice. You bring up a spectre of, you know, saying, "Well, the Board did not even follow its own rules, then a layman might think, "Well, we can knock out the decision." That's new spectre, that's a new consideration. Of course in the proceedings a lot of times organizations suspend the rules, there is a vote to suspend the rules for a time or whatever. This may add more requirements.

So, I think they're good. I think we've -- I think even the constitution has amendments, you understand, as perfect a document as it is, it needs
amendments from time to time. So, that might be another route to go.

You know and Members know that when we were the Cal tax breakfasts, people have asked questions, you know, and one of the things that they wanted was some rules, some -- a little more structure and I think that may have addressed some legitimate concerns, not problems, but concerns, and so I do think that a lot of progress has been made.

And I hope at some point we approve some or all of these or most of them -- but I guess that may be down the road.

Thank you, Mr. Chairman.

MR. CHIANG: Any other comments? Motion?

MR. LEONARD: I will move adoption.

MR. CHIANG: We have a motion by Bill.

Is there a second?

MR. PARRISH: Do we have -- do you want to try motion without one of the paragraphs as mentioned by one of the Members?

MR. LEONARD: Oh, I was going to start with the

MR. PARRISH: Okay, start with the whole thing.

MR. LEONARD: And regroup.

MR. PARRISH: And regroup, okay, I will second your motion.

MR. CHIANG: Would you take roll, please?

MR. EVANS: Mr. Leonard?

MR. LEONARD: Aye.
MR. EVANS: Mr. Parrish?
MR. PARRISH: Aye.
MR. EVANS: Miss Mandel?
MS. MANDEL: No.
MR. EVANS: Miss Yee?
MS. YEE: Not voting.
MR. EVANS: Mr. Chiang?
MR. CHIANG: No. Motion fails.
Motion, please?
MR. PARRISH: Maybe we need a motion to put this over or something, or table it or do a time specific?
MR. CHIANG: Bill, take it up with Marcy?
MR. LEONARD: Sure.
MS. MANDEL: I am sorry, I had --
MR. LEONARD: Move adoption without Chapter 3.
MR. PARRISH: Second.
MR. CHIANG: Take roll, please?
MR. EVANS: Mr. Leonard?
MR. LEONARD: Aye.
MR. EVANS: Mr. Parrish?
MR. PARRISH: Aye.
MR. EVANS: Miss Mandel?
MS. MANDEL: Aye.
MR. EVANS: Miss Yee?
MS. YEE: Not voting.
MR. EVANS: Mr. Chiang?
MR. CHIANG: No.
Motion passes.

We'll put over Chapter 3.

MR. PARRISH: Yes.

MR. CHIANG: Okay. Next item?

MR. LEONARD: Mr. Chairman?

MR. CHIANG: Yes?

MR. LEONARD: On Chapter 3 I anticipated waiting until after the December hearings, let me say it now, the experiment of the appeals process that you have raised questions on, I think we should ask our staff to come, maybe at the January meeting, and give us how did it work? How many appeals did we avoid because the appeals conference settled the matter? How many appeals were delayed unduly because we set up the appeals conference matter?

To get an update on that, we probably can't do it before January since we -- maybe the end of December meeting but that is probably asking too much of our staff.

But that's my intent to do that, to get the kind of update of did it work?

MS. MANDEL: Right

MR. LEONARD: I know you are asking too.

MS. MANDEL: And it would be -- I would encourage people to also talk with the taxpayers' side.

MR. LEONARD: Yes.

MS. MANDEL: And, you know, even staff separately to see how they felt about the process as
compared to the process in prior years of whether they
thought there was added value, et cetera.

    MR. LEONARD: We may want to do a survey or
something, there's a lot that didn't show up at all
beyond May.

    MR. LAMBERT: May I ask a question about the
process?

    MR. LEONARD: Yes.

    MR. LAMBERT: Given that there's been an
approval of some, not all of the rules, did you want to
go forward with the approved portion of the rules or
hold it in abeyance pending the outcome of the remaining
chapter?

    MR. CHIANG: A sense of the Board?

    MR. LEONARD: Well, as I announced, I guess to
clarify the motion, my intent was to publish that. I
want greater dissemination.

    MR. LAMBERT: Okay. Fair enough.

    MR. LEONARD: Knowing that the Board may
reverse itself with some more feedback on this side of
the table to say we messed up.

    So, I guess I should clarify that was the
intent of my motion.

    MS. MANDEL: Yeah, and it seems to me that when
you get to this other part about chapter -- like I said,
I don't know where there are details in the other
chapters that refer to Chapter 3, but by the time you
come back -- if you are able to do it at the end of
January, you are not going to have the public hearings on stuff until sometime next year. So, it might all meet up.

MR. LEONARD: It might meet up, good point.

MS. MANDEL: And, if it turns out this that whatever you discover results in you all recommending or the Board deciding something different about Chapter 3, you would make whatever revisions on the other things.

It seems like the timing would make things start coming together.

MR. LAMBERT: Thank you.

MR. CHIANG: Okay. next item?

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REPORTER'S CERTIFICATE

State of California )

           ) ss
County of Sacramento )

    I, JULI PRICE JACKSON Hearing Reporter for the California State Board of Equalization certify that on NOVEMBER 21, 2006 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 36, constitute a complete and accurate transcription of the shorthand writing.

Dated: December 4, 2006

________________________________________
JULI PRICE JACKSON
Hearing Reporter